

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 21, 2009

10:08 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Hearing re: Motion of Donald R. Sweeton and Sarah E. Sweeton  
to Compel Debtors' Performance under Lease of Nonresidential  
Real Property and for Payment of Administrative Expenses

Hearing re: Motion of CSX Transportation, Inc. to Compel the  
Payment of Administrative Expense Claim

Hearing re: "GM Arrangement Fourth and Fifth Amendment  
Approval Motion" - Motion for Order Authorizing Debtors to  
enter into Fourth Amendment and Fifth Amendment to Arrangement  
with General Motors Corporation

Hearing re: "Steering Option Exercise Motion" - Motion for  
Order Authorizing and Approving Option Exercise Agreement with  
General Motors Corporation

Hearing re: "Fourth Amendment to DIP Credit Agreement  
Motion" - Expedited Motion for Interim and Final Order  
Ratifying and Approving Debtors' Entry into (A) Fourth  
Amendment to Amended and Restated DIP Credit Agreement, (B)  
First Amendment to Amended and Restated Security and Pledge  
Agreement, and (C) Related Documents in Connection Therewith

Hearing re: "Fifth § 1121(d) Statutory Committee Exclusivity  
Extension Motion" - Motion for Order, Solely as to Statutory  
Committees, Extending Debtors' Exclusive Periods within which  
to File and Solicit Acceptances of Reorganization Plan

Hearing re: "Third Accommodation Amendment Motion" - Expedited  
Motion for Interim and Final Authorizing Debtors to (I) Enter  
into Third Amendment to Accommodation Agreement with Certain  
Participating DIP Lenders and (II)(A) Enter into Related  
Documents and (B) Pay Fees and Expenses in Connection Therewith

Hearing re: "Brakes and Ride Dynamics Businesses Sale  
Motion" - Motion for Orders (A)(I) Approving Bidding  
Procedures, (II) Granting Certain Bid Protections, (III)  
Approving Form and Manner of Sale Notices, and (IV) Setting  
Sale Hearing Date and (B) Authorizing and Approving (I) Sale of  
Debtors' Assets Comprising Debtors' Brakes and Ride Dynamics  
Businesses Free and Clear of Liens, Claims, and Encumbrances,  
(II) Assumption and Assignment of Certain Executory Contracts  
and Unexpired Leases, and (III) Assumption of Certain  
Liabilities

Transcribed by: Hana Copperman

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi  
3 Corporation.

4 MR. BUTLER: Your Honor, Jack Butler and Kayalyn  
5 Marafioti for Delphi Corporation. Good morning.

6 THE COURT: Good morning.

7 MR. BUTLER: Your Honor, we have filed a proposed  
8 43rd omnibus hearing agenda. There are eight matters on the  
9 agenda. Two matters involve creditor motions that are being  
10 adjourned to the July 23rd omnibus hearing. Two motions  
11 involve GM related matters that are being adjourned to the May  
12 29th hearing. Two matters relate to final hearings on DIP  
13 related matters. There is an exclusivity motion involving the  
14 creditors' committee only. And then we have our Brakes and  
15 Ride Dynamics Sale Hearings.

16 Based on the work that's been done with the parties  
17 there are no objections on or expected to be contested in  
18 today's hearing.

19 THE COURT: Okay.

20 MR. BUTLER: Running through very quickly, Your  
21 Honor, on the adjourned matters, matter number 1 on the agenda,  
22 the Sweeton administrative claim matter dealing with seeking  
23 performance under nonresidential real property lease at docket  
24 number 16381, this involves that facility we've talked to you  
25 about in prior hearings that was vacated back in October of

1 2008. And the lessors have asked that we adjourn this matter  
2 to the July 23rd omnibus hearing.

3 THE COURT: Okay.

4 MR. BUTLER: Matter number 2 on the agenda is the  
5 motion of CSX Corporation seeking the payment of an  
6 administrative claim at docket number 16548. This involves the  
7 reconciliation case involving about 97 freight invoices we've  
8 talked about in prior hearings. And, again, the parties ask  
9 Your Honor to adjourn this matter to the July 23rd omnibus  
10 hearing.

11 THE COURT: All right.

12 MR. BUTLER: Your Honor, the next matter on the  
13 agenda is matter number 3, the "GM arrangement Fourth and Fifth  
14 Amendment Approval Motion" at docket number 16411. As Your  
15 Honor recalls, we've been carrying this matter following the  
16 objection of the U.S. Treasury Auto Task Force to its  
17 consummation pending the continuing negotiations among the  
18 stakeholders. The parties have asked that this matter be  
19 adjourned to next Friday, to the May 29th hearing.

20 THE COURT: Okay.

21 MR. BUTLER: Similarly, Your Honor, matter number 4  
22 on the agenda, the "Steering Option Exercise Motion" at docket  
23 number 16410, was adjourned previously for the same reason, the  
24 objections to its consummation by the U.S. Treasury Auto Task  
25 Force. We're continuing stakeholder negotiations and have also



1 asked that that matter be adjourned to next Friday, to the May  
2 29th hearing.

3 THE COURT: Right.

4 MR. BUTLER: Your Honor, matter number 5 on the  
5 agenda is the "Fourth Amendment to the DIP Credit Motion" at  
6 docket number 16587. Your Honor approved these amendments on  
7 an interim basis on May 7, 2009 at docket number 16610. No  
8 objections have been filed to the final hearing today. This  
9 has two principal elements of it. The first are a series of  
10 amendments that would facilitate Delphi participating in the  
11 Auto Supplier Support Program in connection with the Chrysler  
12 Chapter 11 case. The second aspect of this is to incorporate a  
13 new Section 8.10 in the credit agreement to alleviate potential  
14 obstacles to the DIP agents' recovery on the DIP facility in  
15 certain foreign jurisdictions. We discussed both of those in  
16 more detail at the interim hearing, and they have been  
17 discussed in our papers.

18 Your Honor, we'd ask at this hearing, in addition to  
19 giving final approval, we'd ask Your Honor to give final ruling  
20 that the Fourth Credit Agreement Amendment documents and each  
21 of the instruments and documents as may be necessary to  
22 effectuate those amendments constitute valid and binding  
23 obligations of the debtors, the agent, the DIP lenders,  
24 enforceable against each party in accordance with their  
25 respective terms. We also ask the Court find that the Court's

1 prior DIP orders are supplemented by your order approving this  
2 motion, but otherwise continue in full force in effect.

3 THE COURT: All right. I'll do that. Are there any  
4 changes to the final order from the form that was filed?

5 MR. BUTLER: We submitted, Your Honor, a blackline  
6 between the interim and the final, but there's no other  
7 changes. This is just a --

8 THE COURT: All right.

9 MR. BUTLER: There were just administrative changes  
10 to make it a final order as opposed to an interim order.

11 THE COURT: Okay. So I'll approve that amendment on  
12 a final basis, and you can hand that up at the end of the  
13 hearing.

14 MR. BUTLER: Thank you, Your Honor. Your Honor,  
15 matter number 6 on the agenda is the "Fifth § 1121(d) Statutory  
16 Committee Exclusivity Extension Motion", filed at docket number  
17 16594. This was originally filed as to both statutory  
18 committees, because we filed this prior to the equity committee  
19 being disbanded on April 24, 2009 and the time for appeal to  
20 that having not yet elapsed. There is no appeal taken from  
21 that order. The committee has the -- the U.S. trustee has  
22 disbanded that committee, and so this relief is sought only  
23 against the creditors' committee. There are no objections by  
24 the creditors' committee to it, and it simply would, as to that  
25 committee, extend the time for filing of any plan modifications

1 or other plans to July 31, 2009 and the time of solicitation to  
2 September 30, 2009, subject to all the reservations we've  
3 talked about in prior hearings.

4 THE COURT: Right. And for the same reasons as with  
5 the prior hearings I will approve the extension as to the  
6 official creditors' committee.

7 MR. BUTLER: Thank you, Your Honor. Your Honor,  
8 matter number 7 on the agenda is the "Third Accommodation  
9 Amendment Motion" for final hearing. It was filed at docket  
10 number 16599. Your Honor approved these amendments on an  
11 interim basis by an order entered on May 7, 2009 at docket  
12 number 16609.

13 Your Honor, a couple of comments about the amendment  
14 that's here for final hearing. This, as Your Honor knows, did  
15 two things. It extended a series of milestones, the principal  
16 one which was the delivery of a term sheet to the agent to  
17 midnight this evening on May 21st. But, more importantly, it  
18 continued the accommodation period through June 2, 2009,  
19 subject to the terms of that amendment.

20 The parties are continuing to negotiate in good  
21 faith. As Your Honor knows, there are some matters that have  
22 been referred to judicial mediation, and there is a mediation  
23 order that's been entered on the docket. The parties are  
24 continuing to negotiate and have scheduled negotiations over  
25 the course of the holiday weekend and are moving forward, I

1 think, in good faith on those matters and working with each  
2 other, all focused, quite candidly, on the May 29th hearing  
3 Your Honor has established, to which the previously filed plan  
4 modification motion has been adjourned and the relevant GM  
5 motions have been adjourned. It's our anticipation that there  
6 will be filings made in this court either as amendments to the  
7 motions that are currently set for hearing, or, alternatively,  
8 on order to show cause basis. During the week next week,  
9 probably later in the week given the fact that it's a holiday  
10 weekend as well, we would expect to be able to provide more  
11 information to the Court about next steps in these cases at the  
12 May 29th hearing.

13 THE COURT: Okay. So as far as this particular  
14 motion is concerned, though, there are no changes to the order  
15 except to make it a final order?

16 MR. BUTLER: There are no changes except to make it a  
17 final order, Your Honor, and all of the relevant time frames  
18 that operate in connection with the prior orders are similar  
19 here so that --

20 THE COURT: They're staying the same.

21 MR. BUTLER: They're staying the same, and Mr.  
22 Resnick is here in court today, and I think he would tell you  
23 that the parties are continuing to work with each other, and  
24 while we may not have a final term sheet delivered this evening  
25 the parties continue to negotiate that over the period between

1 now and the expiry date on June 2nd, that the fact there is an  
2 expiry date on June 2nd is one of the reasons we have a May  
3 29th hearing, so that we can address that issue and address  
4 continued financing of these cases at that hearing.

5 THE COURT: Okay. All right. Well, you've been  
6 careful to keep me up to speed with the other parties on this  
7 process, and I'll approve this motion or this Third Amendment  
8 on a final basis, then, today.

9 MR. BUTLER: Thank you, Your Honor. Your Honor, the  
10 next matter on the agenda, matter number 8, is the final  
11 hearing on the "Brakes and Ride Dynamics Businesses Sale  
12 Motion", filed at docket number 16533. We propose to seek Your  
13 Honor's final approval to sell these businesses to BeijingWest  
14 Industries Co., Ltd. and certain of its affiliates, and, Your  
15 Honor, the buyer is a Chinese investment entity of which key  
16 investors include -- I apologize if I don't pronounce these  
17 properly. Shougang Corporation is a majority owner and  
18 affiliate of Tempo International Group as well. Tempo  
19 International Group is a Hong Kong based family group whose  
20 holdings include, among other businesses, Norstar Founders  
21 Group Ltd., an automotive parts and supplier.

22 Your Honor, we came before the Court and obtained an  
23 order approving the bidding procedures in the first step of  
24 this sale process, and that order was entered on May 1, 2009 at  
25 docket number 16588. Among other things, that called for us to

1 do certain noticing and to establish a bid deadline at 11 a.m.  
2 Eastern Time on May 11, 2009. The debtors did not receive any  
3 qualified bids as of that deadline, or any other bids, to my  
4 knowledge, qualified or unqualified, and, consequently, there  
5 was no auction conducted on May 15th as otherwise was provided  
6 in the Bidding Procedures Order.

7 A couple of items I'd like to bring to Your Honor's  
8 attention. The agreement, the Master Sale and Purchase  
9 Agreement, was amended on May 20, 2009, and the proposed order  
10 has certain additional provisions contained in it.

11 First, with respect to the First Amendment to the  
12 agreement that was entered into on May 20th, that, among other  
13 things, memorialized certain modifications to the agreement  
14 that were contemplated in paragraph 8(b) of Your Honor's  
15 Bidding Procedures Order regarding the PBGC's purported liens  
16 and the assets of certain of the debtors' non-filing affiliate  
17 sellers.

18 Because the buyers were reluctant to amend the  
19 agreement beyond those changes contemplated in the Bidding  
20 Procedures Order certain of the changes that have been agreed  
21 to between the parties are in the form of a sale order and have  
22 been added to the sale order provisions, which I'll address  
23 with Your Honor in a moment.

24 The First Amendment to the agreement and a redlined  
25 copy of the revised sale order was served on certain key

1 stakeholders and these debtors and is docketed at docket number  
2 16629, so we've provided notice of these matters.

3 Your Honor, the Bidding Procedures Order, at that  
4 time, you may recall, we spent a lot of time working with the  
5 PBGC on some of the concerns that they had and settled their  
6 objection at that time with respect to it. And the PBGC, as I  
7 understand it, is -- and no other party is objecting to the  
8 form of final order that we're presenting to Your Honor today  
9 for consideration.

10 There are a couple of paragraphs I'd point out to  
11 Your Honor that are of note in resolving these matters, and  
12 they're really decretal paragraph 7 and decretal paragraph 6 of  
13 the sale approvals Order. Both of these paragraphs, and I'm  
14 not going to read them in their entirety on the record, I'll  
15 just make note of them here, but these changes are necessary to  
16 make clear that unless the PBGC's purported liens are actually  
17 enforced in any local or applicable jurisdiction the buyer  
18 cannot refuse to close or terminate the agreement on account of  
19 those liens.

20 And, furthermore, in the event that those purported  
21 liens are enforced in any applicable and local jurisdiction,  
22 paragraph 7(2) requires the buyer to give the sellers thirty  
23 days written notice. If the buyer decides not to close or  
24 decides to terminate which is subject to the seller's right to  
25 cure set forth in Section 9.1.4 of the agreement, or decides

1 both not to close and to terminate -- so there's a series of  
2 notice provisions as well.

3 We've also added paragraph C to the sale order,  
4 noting that the objection to the assumption and assignment of  
5 its prepetition contract filed by Tokico, T-O-K-I-C-O, (USA),  
6 Inc., which was docketed at docket number 16611 and withdrawn  
7 with prejudice at docket number 16626.

8 We've also made some administrative changes to the  
9 order, Your Honor, which are not material, and have provided  
10 the Court a blackline as well as having served it at the  
11 previously docketed entries I've indicated.

12 Your Honor, where there are a series of evidentiary  
13 objections, and the buyer would like to make a -- excuse me. A  
14 series of exhibits, and the buyer would like to make a proposed  
15 proffer in support of the buyer's good faith. Just a moment.

16 THE COURT: Okay.

17 MR. BUTLER: With respect to the evidentiary  
18 exhibits, there are eighteen of them that we've presented to  
19 the Court. They include the confidential, highly confidential  
20 declaration of Keith Stipp, who is present in the courtroom  
21 today and who is testifying in support of the sale. We  
22 provided the agreements, including the amendment I've just  
23 discussed, the various motions and orders including the  
24 blackline order that I discussed, notices with respect to  
25 executory contracts, the responses to the Bidding Procedures



1 Motion filed by the PBGC. The objections have now been  
2 resolved with respect to assumption or assignment, so there are  
3 no objections pending to assumption or assignment and all the  
4 various affidavits of service and publication were carried out  
5 as required by Your Honor's prior order.

6 Your Honor, we would move admission of Exhibits 1  
7 through 18 in support of the sale.

8 THE COURT: Okay. Does anyone object to their  
9 admission? I'm hearing no objections. I'll admit those  
10 documents. I've read Mr. Stipp's declaration and don't have  
11 any questions of him, but if anyone has any questions they want  
12 to ask him now is the time. Okay. Thank you.

13 (Documents Supporting Brakes and Ride Dynamics Businesses Sale  
14 were hereby received as Debtor's Exhibit 1-18 for  
15 identification, as of this date.)

16 MR. ABRAMOWITZ: Thank you, Your Honor.  
17 Steven Abramowitz of Vinson & Elkins on behalf of the buyer,  
18 BeijingWest Industries. I have in the courtroom  
19 Mr. Michael Evans, who is the vice president of Beijing  
20 Industries. I would like to proffer the following testimony.  
21 If Mr. Evans was on the stand he would testify that he was  
22 involved in the negotiations of the master sale and purchase  
23 agreement, and he would also testify that BeijingWest  
24 Industries negotiated that agreement in good faith and at arm's  
25 length.

1 THE COURT: Okay.

2 MR. ABRAMOWITZ: Thank you.

3 THE COURT: Did anyone wish to question Mr. Evans on  
4 that proffer? Thank you. Is this still set to close in  
5 November or before November 1st?

6 MR. BUTLER: It's going to close, I think, Your  
7 Honor, before the end of the year, but probably in the third or  
8 fourth quarter.

9 THE COURT: Okay.

10 MR. BUTLER: In terms of the work that needs to go  
11 on. Again, Your Honor, in terms of -- we went over all the  
12 terms of this sale at the preliminary hearing in connection  
13 with the bidding procedures, and there have been no material  
14 amendments to the transaction that was described to you for the  
15 sale of the Brakes Business and the Ride Dynamics Business. So  
16 unless Your Honor has any other questions we're going to rely  
17 on the record that's before the Court.

18 THE COURT: Okay. I guess the one issue I had, well,  
19 I had two issues. One is the motion is careful to point out  
20 that one of the reasons the debtors were comfortable with the  
21 buyers here is their belief and confidence that they could  
22 transition the business from themselves to the buyers without  
23 harming or disrupting their customers. When does that  
24 transition process start? Does it start at the closing or  
25 in --

1 MR. BUTLER: I think Mr. Stipp would tell me in some  
2 respects it's already started.

3 THE COURT: Okay.

4 MR. BUTLER: That's typically how these work.

5 THE COURT: All right. And there's some funding that  
6 goes along with that.

7 MR. BUTLER: Yes, there is.

8 THE COURT: Okay.

9 MR. BUTLER: And that's described. We describe that  
10 in the motion. I think there are also -- the buyer agreed to  
11 make certain advance payments to address some of those matters  
12 as we've described in a motion in the agreement.

13 THE COURT: Okay. All right. And I asked you  
14 already about the closing, so those were my questions. All  
15 right. Does anyone wish to be heard on this motion? All  
16 right. Based on the motion and the declaration in support, as  
17 well as the proffer, I'm prepared to make the findings in the  
18 proposed order including with regard to the buyer's good faith  
19 and 363(n) and (m) being satisfied. Based on there being no  
20 objection and adequate notice I'm also prepared to approve the  
21 portion of the proposed order that provides for an allocation  
22 of the purchase price among the debtor and non-debtor sellers,  
23 and, generally, to make the findings set forth in the order.  
24 So I'll approve the motion.

25 MR. BUTLER: Thank you very much, Your Honor. Your

1 Honor, that concludes the matters that are before the Court for  
2 this morning's omnibus hearing.

3 THE COURT: Okay. Thank you.

4 MR. BUTLER: Thank you.

5 (Proceedings concluded at 10:25 AM)

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I N D E X

E X H I B I T S

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RULINGS

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Approval of Brakes and 19 24  
Ride Dynamics Businesses  
Sale Motion

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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HANA COPPERMAN

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Date: May 22, 2009